

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WARREN SMITH,

Plaintiff,

9:06-CV-0529
(DNH)(GHL)

vs.

HOWARD SILVERBERG, M.D.; GARY GREEN,
Superintendent; and ALBERT PAOLANO, Chief, M.D.,

Defendants.

APPEARANCES:

OF COUNSEL:

WARREN SMITH

Plaintiff, pro se

Last Known Address:

00-A-2235

Coxsackie Correctional Facility

P.O. Box 999

Coxsackie, NY 12501

HON. ANDREW M. CUOMO

Attorney General of the

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Albany, New York 12224

RISA L. VIGLUCCI, ESQ.

Asst. Attorney General

HON. DAVID N. HURD

U.S. District Judge

DECISION and ORDER

This civil rights action was commenced by pro se plaintiff Warren Smith on May 1, 2006. Plaintiff was granted leave to proceed in forma pauperis and service was effected on the defendants. Defendants filed their answer on October 27, 2006. Dkt. No. 15.

Thereafter, by Order filed December 26, 2006, United States Magistrate Judge George H. Lowe set pretrial deadlines in this proceeding. Dkt. No. 16.¹ Service of that Order by the Clerk of the Court was returned as undeliverable to plaintiff at Coxsackie Correctional Facility, his address of record in this proceeding. Dkt. No. 17. The envelope has the word “discharged” written on it. Id.

It has now come the Court’s attention that plaintiff Warren Smith is deceased.² Accordingly, counsel for the defendants is directed to review the file in this matter to determine whether a suggestion of death pursuant to Rule 25(a) of the Federal Rules of Civil Procedure (“Rule 25”) is appropriate with regard to the plaintiff.³ Any such suggestion of death shall be filed no later than October 31, 2007, and any next of kin shall be duly notified thereof.

THEREFORE, it is

ORDERED, that

1. Counsel for the defendants is directed to review the file in this matter to determine whether a suggestion of death pursuant to Rule 25(a) of the Federal Rules of Civil Procedure (“Rule 25”) is appropriate with regard to the plaintiff;

¹ The dispositive motion filing deadline is October 30, 2007. Id.

² The website maintained by the New York State Department of Correctional Services lists plaintiff as deceased and identifies his release date as October 16, 2006. See www.nysdocslookup.docs.state.ny.us.

³ Rule 25(a) sets forth the procedure to be followed for the substitution of parties upon the death of a party. Rule 25(a)(1) provides that a motion for substitution may be filed by any party or by the “successors or representatives of the deceased party.” If a motion for substitution is not filed within ninety days after the death of a party has properly been suggested upon the record, “the action shall be dismissed as to the deceased party.”


2. Any such suggestion of death shall be filed **no later than October 31, 2007**, and any next of kin shall be duly notified thereof;

3. The Clerk shall return the file to the Court for further consideration no later than January 15, 2008; and

4. The Clerk shall serve this Decision and Order by mail addressed to plaintiff's and defendants' last known address respectively.

IT IS SO ORDERED.

Dated: October 2, 2007
Utica, New York.


United States District Judge